

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 08-10175-JTM

FRENCHIE D. WILSON,

Defendant.

MEMORANDUM AND ORDER

Presently before the court is defendant Frenchie Wilson's (Wilson's) motion to suppress (Dkt. No. 17). The court held a hearing on January 7, 2009. For the reasons detailed on the record and summarized briefly below, the motion is denied.

On March 31, 2008, Wichita Police Officers responded to the scene of a drive-by shooting at 1303 N. Lorraine, Wichita, Kansas. Officer Robert Prebble contacted three people inside the home, including defendant Frenchie Wilson. Upon entering the home to check on the status of the people inside, Officer Prebble saw a baggie of marijuana in plain view. After the occupants of the house refused to consent to a search, Officer Prebble applied for a search warrant from Sedgwick County District Court Judge Warren Wilbert. Wilson claims that Judge Wilbert signed on the line for the affiant's signature, noticed his mistake, crossed out his signature, and then signed in the correct location, and that this mistake invalidates the warrant.

The search warrant was based on probable cause, due in large part to the officer's own first-hand account of drugs in plain view. Second, if there was an error with the search warrant, it was the error of the magistrate, and not the police. Courts have repeatedly held that the "exclusionary rule was adopted to deter unlawful searches by police, not to punish the errors of magistrates and judges." *Illinois v. Gates*, 462 U.S. 213, 263 (1983) (White, J., concurring in judgment). Simply signing in the incorrect spot and then correcting the mistake should certainly not lead to suppression. Accordingly, the motion to suppress is denied.

IT IS ACCORDINGLY ORDERED this 12th day of January, 2009, that defendant Wilson's motion to suppress (Dkt. No. 17) is hereby denied.

s/ J. Thomas Marten
J. THOMAS MARTEN, JUDGE